U.S.

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No. 94-1222

In The

# Supreme Court of the United States

October Term, 1994

JESSIE TILSON

*Petitioner,*

vs.

FORREST CITY POLICE DEPARTMENT,
JOE GOFF, CHIEF,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit**

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

I. THERE IS NOT SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT IN IMPOSING LIABILITY UPON CHIEF JOE GOFF UNDER 42 USC 1983.

II. THE DECISION OF THE COURT OF APPEALS IS NOT ERRONEOUS.

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## JURISDICTION

The Court of Appeals entered its Judgment on July 5th, 1994 and denied a Request for Rehearing En Banc on August 22, 1994. The jurisdiction of the Court of Appeals is based on 42 USC § 1983 and 28 USC § 1291. This Court's jurisdiction is based on 28 USC § 1254.

## STATEMENT OF THE CASE

Jessie Tilson the Petitioner was arrested by two (2) officers of the Forrest City Police Department on April 4, 1989 and was incarcerated until his release on June 11, 1990. The arrest was based upon the existence of a parole violator's warrant in the state of Missouri (TR vol. 1, 50). On April 17, 1989 a warrant was issued out of the Circuit Court of St. Francis County, Arkansas charging the Defendants with first degree murder and setting his bond at Fifty Thousand Dollars ($50,000.00) (TR vol. 1, 68). The Petitioner was taken to the Municipal Court of Forrest City, Arkansas on April 19, 1989 and the case was bound over to Circuit Court. At that time the bond was set by the Municipal Court (TR vol. II, 240,241). At that point, the policemen turned their file over to the Prosecuting Attorney's Office. The Prosecutor should have prepared a second Affidavit to go with the formal charging document, the Information. That document is customarily filed in Court by the Prosecuting Attorney and the police authorities do not have the right to file any such document (TR vol. II, 242). For some reason the Prosecuting Attorney's Office never filed an Information in Circuit Court and the Defendant was never formally charged in

Circuit Court. The jury entered a verdict in favor of the two (2) policemen involved, finding that they had not violated Petitioner's civil rights and a verdict against the Chief of Police and Forrest City Police Department. A Motion for New Trial or Judgment not withstanding the Verdict was filed in the District Court and the same was denied. The United States Court of Appeals for the Eighth Circuit reversed the District Court and held that there was no evidence that the Chief or the Police Department did anything to violate Petitioner's rights and held that there was no custom or policy of the Police Department that had caused the Petitioner's incarceration. The Court of Appeals also found that if there were no violations of the Constitutional rights of the Petitioner by the actors, the two (2) police officers, then there could be no violations of the petitioner's rights by the Chief of the Police Department as there was no proof of anything that the Chief or the Department did that would have constituted a violation of Petitioner's rights.

## SUMMARY OF ARGUMENT

The Petitioner was arrested on April 4, 1989 by Officers Bill Dooley and Dewey Ramsey of the Forrest City Police Department on a parole violator's warrant out of Missouri. Thereafter, the Defendant was re-arrested on April 17, 1989 on a warrant issued out of the Circuit Court of St. Francis County charging the Defendant with first degree murder. The Defendant's bond was set at Fifty Thousand Dollars ($50,000.00) by the Court. On April 19, 1989 the Defendant was taken to the Forrest City Municipal Court for his first judicial appearance on

the murder charge and was bound over to the Circuit Court of St. Francis County, Arkansas on a Fifty Thousand Dollar ($50,000.00) bond by the Municipal Judge. There is no proof in the case that the Defendant's incarceration resulted from any custom or policy of the Forrest City Police Department or of the Chief. He was arrested in the course of an ordinary police investigation, first on the parole violator's warrant and second on a warrant of arrest issued out of the Circuit Court of St. Francis County, Arkansas on April 17, 1989 charging him with first degree murder. There is no proof in the record that any reckless disregard of the actions of the officers by the Chief or the Police Department resulted in the Petitioner's incarceration. The Petitioner's lengthy incarceration resulted from inaction on the part of the Prosecuting Attorney in failing to file charges against the Petitioner in the Circuit Court and the Officers have no control over the Prosecuting Attorney.

Neither the Chief nor any other official representative of the Forrest City Police Department acted in any way toward the Defendant. Therefore, any municipal liability will have to be predicated on wrongdoing by the officers. The jury has exonerated the officers, in that it returned verdicts that neither of them did anything to violate the Petitioner's civil rights.

## ARGUMENT

### I. THERE IS NOT SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT IN IMPOSING LIABILITY UPON CHIEF JOE GOFF UNDER 42 USC 1983.

Chief Joe Goff testified that he was the chief of police of Forrest City and had been for eighteen years (TR vol. I, 146). In his capacity as Chief he controls police officers within the Forrest City Police Department in that he supervises them. Both Bill Dooley and Dewey Ramsey are employees of his. He has never had any reason to discipline Sergeant Dooley nor Dewey Ramsey with regard to their investigative conduct (TR vol. I, 146). He never discussed the murder case with Dooley or Ramsey. He did not review this investigative file, never conducted any investigation on his own behalf (TR vol. I. 146, 147).

Bill Dooley had worked for the Forrest City Police Department for the last fourteen and one-half years and prior to that had worked for the Sheriff's Office in St. Francis County, Arkansas (TR vol. I, 45). Dooley had gone to several schools in 1958 and 1959 and went to other schools while he was in the Sheriff's Office. In 1978 when he gained employment with the Forrest City Police Department he had completed the State Police Academy in 1958 and had a certificate of completion (TR vol. I, 47). Since 1978 he has attended the State Police Academy for a narcotics school for two (2) weeks and has been to numerous schools and seminars in homicide investigation. He had extensive background and training in criminal investigation and had that background in 1989 (TR

vol. I, 48). Dooley has a high school diploma and a degree from East Arkansas Community College in criminal justice (TR vol. I, 49).

Officer Dewey Ramsey testified that he was a detective with the Forrest City Police Department and had been since 1987 (TR vol. II, 213). He has investigated five (5) or six (6) homicides and has completed the State Police Academy (TR vol. II, 220).

See *Monell v. City of New York*, 436 US 658, 56 L. Ed.2d 611, 98 S. Ct. 2018 (1977). In *Oklahoma City v. Tuttle*, 471 US 808, 85 L. Ed.2d 791, 105 S. Ct. 2427 at 471 US 823 the Court said:

> "In the first place, the word policy generally implies a course of action consciously chosen from among the various alternatives; it is therefore difficult in one sense even to accept the submission that someone pursues a 'policy' of 'inadequate training', unless evidence be adduced which proves that the inadequacies resulted from conscious choice, that is, proof that the policy makers deliberately chose the training program which would prove inadequate, and in the second place, some limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* would become a dead letter. Obviously, if one retreats far enough from a constitutional violation, some municipal 'policy' can be identified behind almost any such harm inflicted by a municipal officer; for example Rotramel would never have killed Tuttle if Oklahoma City did not have a 'policy' of establishing a police force. But *Monell* must be taken to require proof of a

> city policy different in kind from this latter example before a claim can be sent to a jury of a theory that a particular violation was 'caused' by the municipal 'policy'. At the very least there must be an affirmative link between the policy and the particular constitutional violation alleged".

The Petitioner states that Mr. Tilson was arrested without a Warrant and that the arrest was outside the jurisdiction of the Forrest City Police Department. Neither assertion is true. Whether the arrest was outside the city limits of the City of Forrest City has nothing to do with this cause of action, and that issue was never submitted to the jury. As to the assertion that Mr. Tilson was arrested without a Warrant or without process the proof is to the contrary. The arrest on April 4, 1989 was made pursuant to telecommunication from NCIC (TR vol. I, 51). The Petitioner, Jessie Tilson, was placed in jail by Bill Dooley (TR vol. I, 55). He sent a message to Missouri asking for confirmation of there being a valid warrant for the Petitioner for parole violation in Missouri and this was confirmed by a telephone call to Missouri (TR vol. I, 59, 60). A Warrant for the arrest of Tilson was issued out of the Circuit Court of St. Francis County on April 17, 1989. A copy of that Warrant is attached to this Brief as Addendum page one (1). Thereafter, on April 19, 1989 Tilson was taken before the Municipal Court of Forrest City, Arkansas to be bound over to Circuit Court and for the bond to be set at Fifty Thousand Dollars ($50,000.00) a copy of the docket sheet from the Municipal Court of Forrest City is attached hereto as Addendum page two (2).

All of the cases cited by the Petitioner from this point deal with a supervisor who is either participating in the wrongdoing, knows of it or has a reckless disregard for whether or not the wrongdoing is committed. There is no such proof in this case.

## II. THE DECISION OF THE COURT OF APPEALS IS NOT ERRONEOUS

The panel's opinion in no way conflicts with precedent cited by the Petitioner in his brief. All of the cases cited by Petitioner stand for the proposition either that there must be some finding of probable cause before a Defendant can be held in jail or for the proposition that supervisory liability may only be invoked where the supervisor is aware of misconduct and does nothing about it. This Petitioner was afforded due process, in that when he was originally arrested, it was on a parole violator's Warrant out of Missouri. Shortly thereafter the Defendant was held in custody based upon a finding of probable cause made by a Circuit Judge and a Municipal Judge. The Petitioner cites *Wayland v. City of Springdale,* 933 F.2d 668 (8th Cir. 1991) for the proposition that the City, a Police Chief and two (2) officers could be held liable for the detention of an individual for six (6) days following a warrantless arrest, even if they were not responsible for the delay in arraignment. The rationale for the opinion in that case was that the officers had placed Plaintiff in jail, and, although they could not hasten the judicial process, they could have caused the Plaintiff's release at any point in time up until when a judicial officer made a finding that the Plaintiff must be held in

jail. That is not the case here. The Petitioner was originally arrested on a parole violator warrant from the state of Missouri on April 4th and re-arrested in jail on April 17th on a warrant issued from the Circuit Court of St. Francis County, Arkansas directing that Tilson be incarcerated in lieu of Fifty Thousand Dollars ($50,000.00) bond. Thereafter the Petitioner was bound over to Circuit Court by the Municipal Court of Forrest City, Arkansas.

Probably the most important point to be made in this case is that the only actors were Bill Dooley and Dewey Ramsey, the two (2) investigating officers. The Chief of Police did nothing to cause the Petitioner's incarceration nor did any other policy maker with the City of Forrest City, Arkansas. The Petitioner was not incarcerated because of some custom or usage of the City of Forrest City, Arkansas or of the Forrest City Police Department. That being the case the City's liability case be predicated only upon wrong doing by Officers Dooley and Ramsey, which because of the law must be attributed to the Chief or to the Police Department. In this case, by its verdict form, the jury found that neither Officer Ramsey nor Officer Dooley did anything to violate Petitioner's rights. The verdict forms are attached in the Addendum. Simply put if Dooley and Ramsey did not violate the Petitioner's rights then nobody did.

## III. THE QUESTION PRESENTED IS IMPORTANT

The Petitioner cites no additional authority bearing on this case in this section of his argument.

## CONCLUSION

This court should deny Certiorari in the cause and allow the same to be dismissed with prejudice pursuant to the mandate of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

BUTLER, HICKY AND LONG

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# ADDENDUM

App. 1

**COURT DOCKET**
**LOWER COURT JUDICIAL SYSTEM**
**ARKANSAS COUNTY GOVERNMENT**

Case Docket Number S89-1699

St. Francis County Jurisdiction

Receipt / Check Number

**CRIMINAL SECTION**

**Nº 50493**

| NAME OF DEFENDANT | NATURE OF OFFENSE | CLASS OF OFFENSE | OFFENSE CODE | ARRESTING OFFICER (S) | UNIFORM TRAFFIC TICKET NUMBER | DATE OF ISSUANCE MO | DAY | YR | DATE OF COURT TERM MO | DAY | YR | CASH BOND RECEIPT NUMBER | CASH BOND COLLECTED |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12-4-59 jessie Lee Tilson B/m 210 E. 14th St., Curthursville, MO. | Murder 1st degree | | | Dooley, Cole, Ramsey | | 4 | 17 | 89 | 4 | 19 | 89 | | |

**ATTORNEYS**

**FINE AND COST ITEMIZED**

| | | | |
|---|---|---|---|
| 1. Fine/Peanlty | | 11. Judge's Retirement Fund | |
| 2. Court Cost | | 12. DWI — State | |
| 3. Prosecuting Attorney Fees | | 13. Game and Fish Commission | |
| 4. Sheriff | | 14. Transportation Commission | |
| 5. Public Defender | | 15. Highway Department | |
| 6. Jail | | 16. DWI — County | |
| 7. Intoximeter Charge | | 17. Statute Revision | |
| 8. Law Library | | 18. Costs Under #621 | |
| 9. Legal Education | | 19 | |
| 10. State Police Retirement | | 20 | |

**TOTAL FINE AND COST**

**TIME / PAYMENT AUTHORIZATION**

1. Time Payment Authorized ☐
2. Time Payment Terms

**JUDGMENT OF COURT**

4/19/89 - Def ad. penalty; Appt A Klein Atty
Bond $4000 - Bound over to Cir. Ct. [illegible]

25

**STATE OF ARKANSAS**
**COUNTY OF ST. FRANCIS** } SS

**CERTIFICATION**

I, Geneva Vance, Clerk of the Municipal Court of Forrest City, Arkansas, do certify that the above and Foregoing is a true and correct copy of the docket sheet and the order entered in the above styled cause.

This the 21st day of December, 19 89

[illegible]
Deputy

APR 21 1989

DEFENDANT'S EXHIBIT
2

## WARRANT OF ARREST

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

IT APPEARING, that there are reasonable grounds for believing that Jessie Tilson has committed the offense of First Degree Murder in the County of St. Francis: you are therefore commanded Forthwith to arrest him and bring him before me to be dealt with according to law

GIVEN UNDER MY HAND, as Judge of circuit Court of Forrest City, Arkansas this 17 day of April, 1989.

Summon as witnesses for the State:

/s/ Henry Wilkinson
Circuit Judge

---

Bond $50,000.00

/s/ Henry Wilkinson

---

*Tilson v. Forrest City Police Dept., et al*

INTERROGATORIES

*INTERROGATORY #1* DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY ONE OR MORE OF THE DEFENDANTS ACTING UNDER COLOR OF STATE LAW?

yes
(Answer "YES" or "NO.")

/s/ Illegible 11-18-92
Foreperson Date

IF YOU ANSWERED "YES," GO TO NUMBER 2. IF YOU ANSWERED "NO," INFORM THE COURTROOM SECURITY OFFICER YOU HAVE REACHED A VERDICT AND PREPARE TO RETURN TO THE COURTROOM.

*INTERROGATORY #2* INDICATE WHICH OF THE NAMED DEFENDANTS YOU HAVE FOUND TO HAVE VIOLATED THE PLAINTIFF'S CONSTITUTIONALLY PROTECTED RIGHTS. (Answer "YES" or "NO" as to each defendant.)

| | |
|---|---|
| FORREST CITY POLICE DEPARTMENT | YES |
| CHIEF JOE GOFF | YES |
| SGT. BILL DOOLEY | NO |
| OFFICER DUEY RAMSEY | NO |

/s/ Illegible 11-18-92
Foreperson Date

(After completing #2, go to Interrogatory #3)

*INTERROGATORY #3* STATE THE AMOUNT OF MONEY WHICH YOU FIND WILL FAIRLY COMPENSATE THE PLAINTIFF FOR THE DAMAGES HE SUFFERED AS A RESULT OF THE DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS:

COMPENSATORY DAMAGES ..... $12000.00

PUNITIVE DAMAGES ..... $40000.00

/s/ Illegible 11-18-92

Foreperson Date

INFORM THE COURTROOM SECURITY OFFICER YOU HAVE REACHED A VERDICT AND PREPARE TO RETURN TO THE COURTROOM.